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---> Comment Text :
7 Sept. 2001

Hon Spencer Abraham

Secretary,

Department of Energy

Dear Secretary Abraham;

I have lived in southern Nevada for 29 years, where I have served on the faculty of the University of Nevada, Las Vegas. I have published one article and one monograph on the DOE Yucca Mountain site characterization project.

Here is what I would have said in my five minutes, had I been able to stay up late enough to have my turn at the DOE "hearing". I was #81 in Las Vegas, but with Las Vegas being alternated with Carson City, Elko and Reno (maybe 4-5 here, then those cities in turn, then back to here), we were doing about 4-5 per hour till 9 pm. The

word was that after 9 pm, that rotation would stop and only Las Vegas people would speak here (so, maybe 10/hr.). On that approach, I would have had my turn between 3 am and 4 am. I was not able to stay that long. So, here it is :

You have asked that we speak about the basis given to you for a decision about the suitability of Yucca Mountain as a site for high level nuclear waste storage by the documents given to you by the DOE Yucca Mountain project, summarizing their work to date. I see at least eight reasons why you must declare the site unsuitable, and ask the Congress for permission to explore alternative waste management policies.

[1] ? 10101 of the Nuclear Waste Policy Act (NWPA) requires that the site provide permanent "isolation" of the waste, that the geology of the site "prevent release" of the waste so that it would be "isolated from the biosphere". All DOE studies to date show conclusively that this cannot be done; the mountain leaks and breathes, the "tuff" is fractured. Thus, in accordance with the law, you must declare the site unsuitable.

[2] ?10172 of the Act requires that you must close the site if certain kinds of failure occur. The DOE's Yucca Mt. Draft Environmental Impact Statement shows numbers of deaths from site radiation to be an additional 44 at a 5 km. Radius, and goes on to give numbers for 10, 15, 20 and 30 km. Radii. That if failure. Therefore, close the site, according to the law.

[3] ? 10134 explicitly forbids you from considering the need for a site as a factor in your decision-making. Therefore all arguments made by the powerful nuclear power industry lobbyists may not be heard or used in any way. Once this provision of the law is obeyed, then the reasons given at [1] and [2] above hold clear sway.

[4] ? 10137 requires you (and your predecessors), as Secretary, to work with the Governor of the State of Nevada to "resolve" any public health and safety issues raised by you or by the Governor, "at any stage" of the siting process. This provision has not been obeyed, and is not now being obeyed. Therefore you are out of compliance with the law, and must meet with Governor Guinn and resolve these issues before proceeding further; you have no legal authority to make a recommendation to the President while this section of the law is being disobeyed.

[5] Since 1987, the DOE has been violating its own Environmental Justice "Strategy" and the Council on Environmental Quality's Interagency Working Group "Six Principles" , by refusing to work with native American tribal authorities, Nevada elected officials, and the people of Nevada. Public participation requirements strongly upheld when siting chemical and toxic waste dumps are not even undertaken in Nevada. Instead, hasty meetings, unreasonably short notice, managed and controlled atmospheres and open manipulation of the people replaces good-faith efforts to listen, respond, and cooperate. Publics directly impacted by this siting have been closed out rather than facilitated, as your own DOE Strategy and Federal CEQ principles require. Executive Order 12898 has been ignored. These failures completely undermine any claim that the American people have had their legally-assigned role in site decision-making. Since you allow no time for authentic public participation - after 14 years of opportunity to do so ?

[6] ? 10131 requires the ethical evaluation of our obligation to future generations. I have seven grandchildren, some of whom are starting to express dreams of having families. They have not freely consented to the DOE's actions and supposed imperatives to build this thing, 'ready or not'. In fact the DOE has made no statement on this issue, except to suggest that it is worse for future generations if the waste is not buried in Nevada, than it would be if it were. But that is disingenuous, since it is the "lifeboat ethic" - trade endangerment of our grandchildren for the safety of

those in some distant states. That is immoral. How will you comply with this provision of the law?

[7] ? 10172 stipulates that you are required to coerce Nevadans: it rules that money to pay for "mitigation" of harm done to us must be paid, unless we object to your doing that harm, in which case mitigation monies will not be paid. The degradation of such a policy should be rejected; ask the President and the Congress to amend this section into conformity with ? 10137 (about "resolving" with our Governor any outstanding public health and safety issues you or he see as not yet openly resolved).

[8] Finally, beyond the NWP, The Federalist Papers and the Constitution, as well as a long history of American law forbid "the tyranny of the majority". James Madison wrote in the 47th Federalist that "legislative usurpations" by a majority forcing a wrong upon a minority must be stopped just as surely as must usurpations by a President who goes outside the law. The Federal Union is fatally undermined if 49 states can do to 1 state a harm they all hate and reject for their own citizens. Madison repeats and deepens these thoughts in Federalist 63, and in #51, he wrote:

"Justice is the end of government. It is the end of civil society. It ever has been, and ever will be pursued, until it is obtained, or until liberty is lost in the pursuit. In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign, as in a state of nature where the weaker individual is not secured against the violence of the stronger: And as in the latter state even the stronger individuals are prompted by the uncertainty of their condition, to submit to a government which may protect the weak as well as themselves: So in the former state, will the more powerful factions or parties by gradually induced by a like motive, to wish for a government which will protect all parties, the weaker as well as the more powerful".

Mr. Secretary, in compliance with the NWP as explained above, and in respect and compliance with the principles of a free, self-governing people born out of the love of liberty and the hate of tyranny, we see it as your obligation to give these reasons as to why Yucca Mountain cannot be "characterized" as suitable for the building of a high-level nuclear waste repository.

Respectfully,

Craig Walton

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NOTE: For more detail, see the full report on this issue at

http://www.unlv.edu/Colleges/Liberal_Arts/Ethics_and_Policy/Yucca.html

[phone 645-0708]

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